Supreme Court, U.S.
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No. 05-374 SEP 19 2005

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In The Supreme Court of the United States

DÉJÀ VU OF CINCINNATI, LLC,

Petitioner,

v.

UNION TOWNSHIP BOARD OF TRUSTEES; KENNETH GEIS; UNION TOWNSHIP POLICE DEPARTMENT, and JIM PETRO, ATTORNEY GENERAL OF THE STATE OF OHIO,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In light of the fractured nature of this Court's ruling in *City of Los Angeles v. Alameda Books*, 535 U.S. 425 (2002), what level of scrutiny should be imposed – and what standards are to be utilized in applying such scrutiny – upon a content-based regulation which by its very terms significantly reduces the engagement of First Amendment protected activities? In particular, what standards are courts required to apply in order to determine if such a regulation is sufficiently narrowly tailored?

2. Does a regulation which directly, and not incidentally, precludes the engagement of specified expressive activities on private property for 50% of each day violate the First Amendment?

3. Is an hours-of-operation regulation of "adult cabarets" impermissibly underinclusive under the First Amendment and/or violative of equal protection when it: A) exempts those cabarets which are licensed to sell alcoholic beverages from its proscriptions; and B) does not apply to other forms of "adult" businesses, such as bookstores and theatres?

4. The Union Township, Ohio, licensing scheme of "adult cabarets" contains what this Court referred to in *FW/PBS v. City of Dallas*, 493 U.S. 215 (1990), as "civil disability provisions." These require the denial of a license application if the applicant or certain individuals associated with the applicant-business have been convicted of or pled guilty to certain crimes within a specified period of time prior to the submission of the application, and if the "applicant has violated these regulations." They also permit the revocation of a license "upon a finding of a violation of these regulations." Are such civil disability provisions

QUESTIONS PRESENTED – Continued

impermissible prior restraints upon speech and expression pursuant to *Near v. Minnesota*, 283 U.S. 697 (1931), an issue on which this Court granted certiorari in *FW/PBS v. City of Dallas*, but declined to resolve in that decision because of standing issues?

5. Is a licensing scheme of expressive activities impermissibly vague, and does it imbue licensing officials with unbridled discretion, when the licensee is required to exercise "adequate supervision" to "insure that employees comply at all times" with the provisions of the licensing regulations and with state law, and when the regulation requires every licensee, every person named in the application for a license, and every employee of an expressive business, to consent to and "cooperate" with a background investigation of that person, including any criminal record, whenever the licensing officials determine that there is "reasonable cause" to undertake such an investigation; a single violation of which can potentially result in the revocation of the license to engage in the specified First Amendment protected activities as well as the lifetime ban of being able to obtain such a license in the future?

LIST OF PARTIES BELOW/PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES

(PURSUANT TO RULE 14.1(B))

All parties to the proceedings in the Sixth Circuit below are listed in the caption of this case. Although not a corporation, Petitioner Déjà Vu of Cincinnati, LLC states that a majority of its membership interest is held by Deja Vu Consulting, Inc., a Michiga· (non-public) corporation. There is no publicly held company owning 10% or more of the membership interest of Déjà Vu of Cincinnati, LLC.

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